

Atty Docket No. 6173-1002 US

**REMARKS**

Claims 1-24 are pending in this application. Claims 1 and 21 have been amended by this Amendment. The Office Action dated November 3, 2004 rejected claims 1, 2 and 5-24 as being anticipated by prior art under 35 USC 102(e) and rejected claims 3 and 4 as being rendered obvious by prior art under 35 USC 103.

**Claim Amendments**

Independent claims 1 and 21 have been amended to removes references to an improvement in the preamble. The independent claims have also been amended to change "whether to alter the first packet data flow" to --whether to control the network element to directly alter the first packet data flow--. Exemplary, non-limiting, support for this amendment can be found at page 4, line 21, to page 5, line 2, page 8, lines 18-22, page 16, lines 18-23, and page 17, line 11, to page 18, line 2, of the original specification.

**Anticipation Rejection**

The grounds for the anticipation rejection of claims 1, 2, and 5-24 is set forth in part 2 on pages 2-6 of the Office Action. Specifically, the rejection relies upon the dynamic scheduling embodiment illustrated in Figs. 2-4, and described in, for example, paragraphs 22 and 30-69 of U.S. Patent Application Publication No. 2002/0041566 to Yang et al (this embodiment hereinafter being referred to simply as "Yang"). Applicant respectfully submits that Yang does not include each and every one of the combination of features recited in the claims as amended.

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For example, amended independent claim 1 is directed to an apparatus facilitating a first packet data flow, comprising a data packet flow selector which receives "an indication of communication of the packet data in the first packet data flow..." and is "responsive thereto for selecting whether to control the network element to directly alter the first packet data flow..." Independent claim 21 as amended is directed to a method claim and recites substantially similar features. Claims 2, 5-20 and 22-24 are dependent claims and thus also include the features recited in the independent claims. An exemplary, non-limiting, example of such a data packet flow selector controlled a packet data flow is discussed at, for example, page 13, lines 3-13, and page 14, line 13, to page 15, line 7, of the specification. Flow control is thus directly effected similar to a drop of a data packet in conventional systems.

In contrast to the claimed invention, Yang utilizes a dynamic scheduling scheme for allocating priority between different packet data flows corresponding perhaps to different packet radio services. Interference information for each mobile station is obtained by a mobile station request or through traffic measurement at a base transceiver station. This information is used as criteria for allocating more time slots, and thus bandwidth, to the different packet radio services.

Two strategies are described in paragraph 22 and the detailed description of the published patent application. In the first strategy A, the service rate is determined only once during setup and the service rate is optionally re-negotiated with the mobile station if the requested service rate differs from a determined service rate. In the second strategy B, an interference rate is continuously checked and a re-negotiation of the service with the mobile station is optionally requested. In other words, in Yang, there is a negotiation between the mobile station and the base station for bandwidth in the presence of interference. There is no suggestion that there may

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be an alteration or termination of the packet flow merely because of the dropping of data packets or the backup of data packets in a data buffer.

The rejection relies upon paragraphs 39 and 45 of the published patent application. Paragraph 39 addresses the channel congestion control and the Rate Decision (RD) Calculator of a resource manager. Paragraph 45 addresses the QoS (Quality of Service) specifications used to determine various service rates and corresponding allocations of bandwidth between two nodes in the network. This QoS-based agreement is used to determine the service rates and make service rate decisions that can be applied. The determination result initiates a change in allocation of limited bandwidth resources among different competing communications.

The rejection apparently is based on the possibility that this allocation of bandwidth and other resources may have an indirect effect on one or more communications, and thus on the underlying data flows. As explained at, for example, page 16, lines 13-20, in the claimed invention, the underlying data flow is directly controlled and this control may have an effect on the communications. This distinction is believed to now be made clear since the claims as amended recite that a selection is made to "control" the network element and to "directly" alter the packet data flow. Yang does not include or suggest such a feature. Indeed, as explained above, it controls the allocation of bandwidth and other resources.

#### **Obviousness Rejection**

The grounds for the obviousness rejection of claims 3 and 4 is set forth in part 4 on page 7 of the Office Action. Specifically, the claims are rejected as being obvious over Yang in view of U.S. Patent No. 5,708,655 issued to Toth et al (This patent hereinafter being referred to simply

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as "Toth"). Applicant respectfully submits that the rejection fails to establish a motivation to selectively combine the references in the manner proposed in the rejection.

The rejection acknowledges that the features of claims 3 and 4 are not included in Yang, but asserts that it would have been obvious to include these features in Yang "so that data packets can be routed properly between mobile stations and the Internet network." However, there is no indication that the data packets in Yang are not properly routed between mobile stations and the Internet network. The rejection cites col. 6, lines 38-48, of Toth, but this cited portion merely describes part of the communication system. In particular, the cited portion does not provide any teaching for selectively modifying Yang to provide the specific combination with Toth proposed in the rejection.

Please charge any fees due in connection with the filing of this Amendment, to Deposit Account No. 02-4270 (Dkt. No. 6173-1002US) and please credit any overpayment or excess fees to such deposit account.

Respectfully submitted,



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